



Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-705
Regulation title	Child Protective Services
Action title	Comprehensive Review of the Regulation
Date this document prepared	December 10, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The proposed regulatory action will amend existing Child Protective Services (CPS) regulations, add new regulations to incorporate current Code of Virginia (Code) requirements, and clarify existing regulations. These changes include (1) expanding the definition of physical and medical neglect, (2) clarifying the use of state criminal history searches in CPS investigations, (3) clarifying the requirement to electronically record victim interviews and the exceptions to that requirement, (4) revising the length of time local departments of social services (LDSS) have to validate a report or complaint, and (5) amending training requirements.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Board of Social Services (Board) approved the CPS regulation on December 10, 2008.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 63.2-217 of the Code of Virginia delegates the authority and responsibility for promulgating child welfare regulations to the Board. Section 63.2-1503 instructs LDSS to staff CPS units and carry out the CPS program according to regulations adopted by the Board.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This regulatory action is essential to protect the health, safety or welfare of children at risk of child abuse or neglect by amending the CPS regulations to make them consistent with recent changes to the Code pertaining to the CPS program.

The goal of this regulatory action is to amend existing CPS regulations and add new regulations to make the CPS regulations consistent with the Code. These regulatory changes will clarify and strengthen the CPS program while balancing the rights of alleged abusers with protecting children and families. The proposed changes take into account the resources of LDSS to administer the CPS program.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The proposed regulatory action expands the definition of physical abuse to include children who are left alone with a person required to register as a violent sex offender. It requires the LDSS, upon request by the subject of an unfounded complaint of abuse or neglect, to advise the subject if the complaint was made anonymously.

The proposed regulatory action expands the definition of medical neglect by specifying that a decision by the parents or other person legally responsible for a child with a life-threatening condition to refuse a particular medical treatment shall not be deemed a refusal to provide necessary care if certain conditions are met.

The proposed regulatory action changes the length of time allowed to validate a CPS report from 14 to 5 days. It also clarifies that LDSS may conduct either investigations or family assessments in response to complaints of child abuse or neglect. Currently, regulations authorize LDSS to conduct only investigations in response to complaints of child abuse or neglect. Risk assessments will be required with both family assessment responses and investigations. The proposed change will allow CPS workers to inform a Family Advocacy Program when a family assessment response in response to a valid CPS report has

identified service needs, which may result in improved services to families and children. It clarifies that families may decline services offered as a result of either a family assessment or an investigation.

The proposed regulatory action requires reasonable diligence to locate a victim child when either of two conditions is met; the existing regulation requires reasonable diligence to locate a victim child when both conditions are met. These conditions are the existence of a founded investigation or a child protective services case opened pursuant to § 63.2-1503 (F).

The proposed regulatory action affects several aspects of abuse or neglect investigations. It clarifies the requirement to tape victim and abuser interviews and the methods to record interviews. It establishes authority for LDSS to conduct state criminal record checks as part of the investigation process. It provides that siblings of the victim and other children in the home are to be interviewed and observed by the CPS worker during the investigation; other children in the home of the victim child can offer valuable information to the CPS worker. The proposed regulatory action removes the requirement to observe the home environment of a victim in an Out of Family report and allows LDSS discretion to determine when such observation is necessary.

The proposed regulatory action deletes the requirement that the local director or designee meet with the alleged abuser prior to a founded disposition being made; it clarifies that an alleged abuser may meet at any time with LDSS staff during the investigation to hear and refute the evidence.

The existing regulation provides only for the training of CPS workers and requires training to be completed within one year of employment. The proposed regulatory action adds supervisors to the employees that must be trained and extends the time to complete training to two years. It also confirms that required training includes family assessment response policy and skills.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The proposed regulatory action will enable LDSS to use CPS staff resources more effectively when conducting investigations and family assessments. The proposed regulatory action will enable the Department of Social Services (DSS) to more effectively assist LDSS to train LDSS staff by including CPS supervisors in the training plan and by increasing the length of time that CPS workers have to complete required training.

The proposed regulatory action poses no disadvantage to the Commonwealth or to the public.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
22VAC40-705-80	The proposed regulation requires all victim interviews be audio taped with certain exceptions. The exceptions include the local commonwealth attorney making a determination that electronic taping of the victim interview is not appropriate in the context the criminal investigation.	Continue to use the existing language in the section.	There was significant public comment that decisions about the conduct of the investigation are not usually managed by the local commonwealth attorney. The existing language is sufficient.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
*Virginia Association of Commonwealth Attorneys *Local Child Prevention Agency *Local CPS worker *Governor’s Advisory Board on Child Abuse and Neglect	Recommends retaining the existing language in 22VAC40-075-80 regarding the exception to electronically recording a victim interview if electronically recording may negatively impact a concurrent criminal investigation. Decisions about the conduct of the investigation are not usually managed by the local commonwealth attorney.	Based on the public comment, the proposed regulation has been removed and the current language retained.
*Citizen *Local Child Prevention Agency *Court Appointed Special Advocate	Concerned that local CPS staff will not receive training on a timely basis to meet the requirements of 22VAC40-705-180 and recommends retaining the current regulation language to complete CPS training in one year and agrees with adding supervisors to CPS staff in LDSS who must be trained.	Providing additional time for local CPS workers to receive the additional training will allow LDSS to balance the need for training of new staff with the day-to-day operation of the local CPS program. CPS policy guidance will detail the required core courses to meet the training requirements and ensure that CPS workers are trained on a timely basis.
*Physician *Local Child Prevention Agency *Governor’s Advisory Board on Child Abuse and Neglect *State Child Fatality Review Team	Does not believe the definitions of certain terms pertaining to medical neglect of terminally ill children in 22VAC40-705-10 are appropriate or provide adequate protection and safety to children with terminal illness.	The definitions as proposed are based on recommendations from the Attorney General’s Office and should not be revised.

*Betty Wade Coyle, Local Child Prevention Agency	Recommends CPS hearing officers be required to complete CPS policy training.	It is not necessary to put this requirement into regulation. CPS appeals officers receive training in CPS policy.
*Laura Mercier, Citizen/Parent	Recommends requiring all reports of abuse or neglect in public schools be investigated if the reporter is the parent.	This would require a change in the Code to expand the authority of CPS to respond to reports of suspected child abuse or neglect.
*Irv Beard, Elementary School Principal	Recommends changing language in 22VAC40-705 from the social worker will “make every effort” to “will not reveal” the identity of the complainant.	The Code does not provide complete anonymity for complainants. The current language will be retained.
* Michael S.J. Chernau, Assistant County Attorney	Recommends that electronic recording be further defined in regulation.	DSS recommends no further definition of electronic recording in regulation. Further guidance will be provided as needed.
*Michael S.J. Chernau, Assistant County Attorney	Recommends amending the regulations to allow a forensic interview conducted by a team member to substitute for the “face to face” interview with the victim.	CPS policy provides guidance for this situation. A forensic interview cannot replace the face to face interview with the victim because the CPS worker is required to provide additional information about the CPS investigation to the victim.
* Michael S.J. Chernau, Assistant County Attorney	Does not agree with including investigations in 22VAC40-705-150B	The intention of the regulation is to affirm that a family may decline services at the conclusion of either an investigation or family assessment. If the family’s refusal of services increases risk of harm or impacts child safety, the CPS worker may petition the court on that basis.
*The Reverend Thurmond Echols, Governor’s Advisory Board on Child Abuse and Neglect	Replace current definition of physical neglect with more detailed definition of failure to thrive or gain weight	The additional detail recommended can be incorporated into CPS policy guidance.
* The Reverend Thurmond Echols, Governor’s Advisory Board on Child Abuse and Neglect	Add “of the Armed Forces” to clarify what Family Advocacy Programs are intended in the CPS regulation	This is unnecessary because 22-40-705-10 clearly defines the program as part of the armed forces.

Four comments were received electronically through the Town Hall Forum. Six comments were received by email. Three comments were received by mail. Two comments from Fairfax Department of Human Services and the Virginia League of Social Services Executives were received by mail after the end of the public comment period are not included in the above comments.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
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<p>22VAC40-705-10</p>		<p>The existing regulation includes only investigations in the definition of "local department."</p> <p>The existing regulation has no definitions pertaining to terminally ill children.</p>	<p>The proposed change clarifies that LDSS conduct either investigations or family assessments in response to child abuse neglect or complaints.</p> <p>The proposed changes add definitions of terms in § 63.2-100 pertaining to medical neglect and terminally ill children.</p>
<p>22VAC40-705-30</p>		<p>The existing regulation does not include children left alone with certain sex offenders in the definition of physical neglect.</p> <p>The existing regulation does not provide an exception for terminally ill children as a type of medical neglect.</p>	<p>B. The proposed change incorporates the current definition of physical neglect in the Code to include a child whose parent or other person responsible for his care knowingly leaves the child alone with a person, not related by blood or marriage, who is required to register as a violent sex offender.</p> <p>C. The proposed changes incorporate the exception for terminally ill children as a type of medical neglect if certain conditions are met, as required by the Code.</p>

<p>22VAC40-705-40</p>		<p>The existing regulation is silent about the newborn infant’s mother and positive drug toxology results.</p> <p>The existing regulation allows investigation as the only CPS response to a valid complaint.</p> <p>The existing regulation allows 14 days to validate the complaint.</p> <p>There is no authority in the regulation to inform the subject of a CPS report who believes the report is malicious that the reporter is anonymous.</p>	<p>The proposed changes include:</p> <p>A. 4 Adds a positive drug toxology report on mother of newborn infant as a basis to validate a report of suspected child abuse and neglect.</p> <p>The rationale for the proposed change supports the intent of the Code to provide a basis to suspect a newborn infant is abused or neglected.</p> <p>A.4 (1) and (3) Adds family assessment as a CPS response option when the complaint has been validated.</p> <p>These are technical amendments to incorporate Differential Response options in the CPS program.</p> <p>A.4. e. Requires DSS to validate the complaint within 5 days. This is consistent with the requirement that a LDSS validate all complaints within the same period of time.</p> <p>F. Requires the LDSS, when requested by the subject of an unfounded investigation, to advise the subject if the report was made anonymously. This change reflects changes to § 63.2- 1514 setting out this requirement which became effective July 1, 2005.</p>
<p>22VAC40-705-50</p>		<p>Requires CPS reports to the LDSS be validated within 14 days.</p> <p>The existing regulation does not include the Code reference pertaining to the definitions of abuse or neglect.</p>	<p>A. The proposed regulatory action will require LDSS to validate a CPS report within 5 days.</p> <p>This change will require LDSS to take action on a report based on the information received. If a report is screened out, a new report can be made when additional information has been received by the LDSS.</p> <p>B.4 The proposed change clarifies the definitions of abuse and neglect are pursuant to § 63.2-100.</p>
<p>22VAC40-705-70</p>		<p>The current regulation specifies audio tape recordings only.</p>	<p>A. The proposed change expands the types of recording that can be made to include electronic recording of victim and/or abuser interviews.</p>

<p>22VAC40-705-80</p>		<p>The current regulation requires all victim interviews be audio taped with certain exceptions.</p> <p>The current regulation provides an opportunity for the alleged abuser or neglecter to tape record the interview.</p> <p>Requires CPS worker to observe the home environment of a child victim in all CPS reports.</p> <p>There is no existing regulation.</p>	<p>The proposed changes provides for more types of electronic recording than audio recordings.</p> <p>B.1 The proposed change includes the siblings of a victim child and/or other children residing in the home with the victim child to be interviewed and observed by the CPS worker during the investigation. Other children in the home of the victim child can offer valuable and important information to the CPS worker conducting an investigation. It is important for the CPS worker to have access to all children in the home to complete a thorough CPS investigation.</p> <p>The proposed change adds an additional exception to electronic taping of victim interviews if the interview occurred during a family assessment and it is detrimental to the child to reinterview the victim.</p> <p>B.2.b The proposed change allows more types of electronic recording of the abuser or neglecter interview.</p> <p>B.4 Allows LDSS discretion to determine when to observe the home environment of a victim in an Out of Family report.</p> <p>In most reports, this requirement does not further the collection of information to make a determination of abuse or neglect since the alleged abuser is not a household member.</p> <p>The current requirement to observe the home environment during the investigation of an in-home CPS report will not change.</p> <p>The proposed changes will not negatively impact the rights of alleged abusers, alleged victims or families.</p> <p>B.7 The proposed new regulation authorizes the LDSS to obtain and consider the results of a statewide criminal history record information about the alleged abuser or neglecter and all adult household members in the home or a home where the child visits.</p>
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<p>22VAC40-705-120</p>		<p>The existing regulation requires the local director or designee to provide an opportunity to conference with the alleged abuser before a founded disposition is made.</p>	<p>D. The proposed change clarifies that an alleged abuser may meet at anytime with LDSS staff during the investigation to hear and refute the evidence that supports a founded disposition.</p> <p>There are three levels of administrative appeal for the abuser or neglecter, including local conference, state hearing and circuit court. It is not necessary for this requirement to be mandatory to ensure the due process of the alleged abuser.</p>
<p>22VAC40-705-140</p>		<p>The existing regulation requires a CPS worker to notify the Family Advocacy Program when there is a founded disposition in an investigation.</p>	<p>E. The proposed change allows CPS workers to inform a Family Advocacy Program when a family assessment identifies service needs.</p> <p>The CPS program allows for either an investigation or family assessment. Allowing CPS workers to inform a Family Advocacy Program when there are identified service needs resulting from a family assessment may result in improved services to families and children served by these programs.</p> <p>The current requirement to notify Family Advocacy Programs when there is a founded disposition in an investigation will not change.</p>
<p>22VAC40-705-150</p>		<p>The existing regulation addresses only family assessments when families wish to decline services</p> <p>The existing regulation requires reasonable diligence to locate a victim child when two conditions are met.</p>	<p>B. The proposed change clarifies that families may decline services offered as a result of either a family assessment or an investigation.</p> <p>The intent of the CPS program is that families may decline services offered as a result of either family assessments or investigations.</p> <p>F. The proposed change requires reasonable diligence to locate a victim child when either of two conditions is met. These conditions are a founded investigation or a child protective services case has been opened pursuant to § 63.2-1503 (F).</p> <p>The current regulation requires both a founded investigation and an open CPS services case. It is important to exercise reasonable diligence to locate a victim child in both situations to ensure the child's safety and to reduce risk of future abuse or neglect.</p>

<p>22VAC40-705-180</p>		<p>The existing regulation requires skills and policy training for CPS investigations to be completed within one year of employment and includes only CPS workers.</p>	<p>B. Adds family assessment skills and policy training requirements for local CPS staff and increases the length of time to complete required training to two years.</p> <p>Family assessments are the most common response by CPS to reports of suspected child abuse and neglect.</p> <p>The skills and policy associated with this response are equally important as those associated with investigations.</p> <p>The proposed change adds supervisors to the training plan. Although CPS workers benefit from policy and skills training, it is equally important that the LDSS supervisor receive policy and skills training. Providing additional time for local CPS workers to receive the additional training will allow LDSS to balance the need for training of new staff with the day-to-day operation of the local CPS program. The current curricula for CPS policy and skills training already include family assessments and investigations.</p>
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Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The proposed regulatory action establishes no additional reporting or compliance requirements nor additional schedules or deadlines other than those required by the Code.

The Code provides a framework for CPS but does not provide the specific process. An alternative to the proposed regulatory action is to amend the Code pertaining to CPS by adding more specificity to CPS processes. This alternative is unlikely because regulations provide a level of flexibility and detail that is inappropriate for statute. This regulation has no impact on small businesses.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage

economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulatory action will have a positive impact to strengthen the authority of parents in the education, nurturing and supervision of their children and will encourage the assumption of responsibility of parents for their children. The proposed regulatory action will have little impact on the strengthening or erosion of the marital commitment nor will there be an impact on the disposable family income. The proposed regulatory action will have a positive impact on the family and family stability by allowing LDSS to use professional discretion and skill to conduct thorough investigations and assessments that result in accurate dispositions and recommendations for services to strengthen families, reduce risk for further abuse and increase safety.